INTERNATIONAL ASSOCIATION
OF SUPREME ADMINISTRATIVE JURISDICTIONS

THIRD CONGRESS OF THE IASAJ
Helsinki 19-21 June 1989

PROCEEDINGS BEFORE THE SUPREME ADMINISTRATIVE COURTS

General report
by Mr. Pekka Hallberg

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Foreword

The topic of the third congress, Proceedings before the Supreme Administrative Courts, is a continuation of the discussions at the previous congresses of our international organisation. At the founding meeting in **Paris** in 1983 we discussed the status and competence of the supreme administrative courts. This provided a basis for a closer examination in **Tunis** in 1986 of who has the right of appeal and of the kind of administrative decisions that can be appealed against. It is logical to go on to an international comparison of the proceedings observed in the administrative jurisdiction.

This general report is based on the national reports submitted by the following countries and organisations in alphabetical order: Austria, Belgium, China, Colombia, the Federal Republic of Germany, Finland, France, Greece, Indonesia, Israel, Italy, theIvory Coast, Madagascar, Pakistan, Poland, Portugal, Senegal, Sweden, Tunisia and Turkey, and the Administrative Tribunal of the United Nations and the Court of Justice of the European Communities. The reports are based on a memorandum. Though it was intended mostly as a recommendation, the national reports have been outlined according to it, and thus they are easy to compare. This again has been a good basis for the general report.

I offer my respectful thanks to my colleagues and rapporteurs. Mr. Heikki Kanninen, Counsellor of Legislation, has given me valuable help in studying the reports, for which I express my gratitude. I have tried to give a general picture of the proceedings in the supreme administrative jurisdictions in the various countries and systems on the basis of the reports, and to formulate questions to be discussed at the congress.

Legal procedure is of great significance as it promotes the implementation of substantive law and legal protection. Effective legal protection requires that the facts in each case be examined as carefully as possible, and that the facts providing the basis for the decision correspond to reality. When developing the administrative jurisdiction and the systems of legal protection, special attention must be paid to the clarity of the proceedings. This is the main theme for the discussions also at this congress.

PROCEEDINGS BEFORE THE SUPREME ADMINISTRATIVE COURTS

1. Introduction

1.1. Starting Points for a Comparison of Jurisdictions

In administrative matters the administration of justice can be arranged in many different ways. Organisationally we first distinguish those countries where legal disputes concerning the administration are to be settled in an administrative court. The system may involve one or several instances. The other alternative is that these legal disputes are entrusted to the general courts, no difference being made between administrative matters on the one hand, and civil and criminal cases, on the other. This formal categorization has, however, proved difficult as the systems develop and numerous modifications exist. Also those countries which have no special administrative courts may have adopted other organisational methods to settle administrative legal disputes, and to emphasize the special character of the administrative cases.

The organisational solutions mostly correspond to practical needs. It is not so much a question of theoretical views on the distribution of power as of safeguarding the legality of the use of power in as functional a way as possible. Thus the organisational differences do not provide a sufficient basis for a comparison of legal protection and the citizens' real possibilities to appeal. At the first conference in Paris we discussed administrative jurisdiction considering the functional entity of the supreme administrative courts' position and competence, and the system of legal remedies.[1)]

The systems of legal remedies can be considered not only focusing on the authorities, but also from the point of view of the citizens, with regard to the remedies available to them and considering to what extent and under what conditions the

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1) The general report prepared by the Chief Rapporteur Francis de Baecque (Chairman of the Report and Study Commission of the Conseil d'Etat) has provided us with a good starting point for further discussions.

legality of administrative decisions can be examined afterwards. Despite economic, social and cultural differences between the systems, the opinions on public power and on the need to control the legality of its use have gradually integrated so far that questions concerning the administration's conformity to law and the citizens' right to contest decisions have become natural objects for an international comparison. During the congress in **Tunis** we could already see[2] that it is a universally accepted principle that the legality of administrative action can be examined afterwards, and that despite differences in the systems, the thoughts on guaranteeing the legality of the actions of the administration run parallell. It is a general trend that the possibilities to contest administrative actions increase and that attention is focusing on increasing legal protection and safety.

During the last years there has been considerable development in the field of administrative jurisdiction in many countries. The national reports give a general description of the organisational structure of the administrative jurisdiction as a background for the reforms and of questions concerning the law on proceedings. Among these recent reforms we can mention the legislative reform carried out in **France** in 1987 after our last congress, introducing as an intermediary instance in the system of administrative courts five courts of appeal, Cours administratives d'appel. At the same time a system of leave of appeal was introduced in the the highest instance. In the same way the system of administrative courts in **Finland** has been strengthened by a new Act from 1989, by which the present lower instances, the Province Courts, are made into administrative courts which in every respect fulfill even the formal requirements. In **Indonesia** the organisation of the administrative jurisdiction has reached an important stage, as the 1986 Act on Administrative Courts must be implemented within five

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2) Kamel Gordah (Presiding judge of the Economic and Financial Chamber of the Administrative Tribunal of Tunisia): The Access of the Public to Administrative Jurisdictions, IASAJ's Publication No 32, page 37.

years, and as a new organisation is thus being created. In **China** the peoples' courts have since 1980 been competent to handle complaints against the measures taken by administrative authorities. An administrative senate was set up in the Supreme Court in the autumn of 1988, and thus it has recently started working.

Here we can also mention the thorough account for the many sectors and instances of the administrative courts in the Federal Republic of Germany. Also the administrative courts of the international organisations, the Administrative Tribunal of the **United Nations** and the Court of Justice of the **European Communities** provide an interesting addition to the judicial comparison of questions concerning proceedings. The structure of the administrative jurisdiction in the systems being compared will be explained later.

The possibilites to use legal remedies and their significance as a guarantee for legal safety naturally vary in different countries. This is explained by differences in the basic relation between the public power and the members of the society. Also economic, social, and cultural differences play a part. On the other hand, it is a general trend that the administration is growing, and as a result the citizens as receivers of rights and assumers of obligations are continually in contact with the administrative authorities. As a consequence the relationship between the exercise of public power and the private citizens is not seen so much as a confrontation, but rather as a kind of permanent relationship, where the citizens are continually in contact with the public power. From this point of view, the practical aspects become most important when arranging the legal remedies, as there must be functioning systems to correct mistakes and to guarantee the administration's conformity to law. Even if the purpose of legal remedies is to provide legal protection in individual cases, the remedies indirectly and more generally further the administration's conformity to law and the upkeeping of the legal order.

Effective legal protection requires that the facts in each case be examined as well as possible, and that the facts forming the basis for the decisions correspond to reality. The aim is always a decision in accordance with the requirements of substantive law. This principle of substantive truth also lies behind the decisions concerning proceedings. The formal proceedings should help to promote the implementation of substantive law.

The questions concerning proceedings are particularly well suited for a judicial comparison. Despite organisational differences, great similarities can be seen in the proceedings. The procedural statutes are similar, despite greater differences in the material legislation. Proceedings are instituted, matters examined and decisions made, and also reasons are stated along very similar lines. There is a good basis for this congress to start its discussions.

The proceedings are ruled by general principles of justice and procedural statutes, but in practice they are to a considerable extent developed by the courts. Also from this point of view the contacts between the supreme administrative courts and the members' discussions on practical questions are important for the development of the systems. In this way the responsibility of the deciding authorities that matters are examined, and the investigation principle, emphasized in many reports, gain real significance.

1.2. Outline

In order to give an overall picture, this general report first explains the structure of the administrative jurisdiction and the procedural bases in the various countries. From there it goes on to study the question of whether there is a general act or other general statutes on administrative jurisdiction, or whether special statutes are applied in different groups of cases. Also the significance of general legal principles and

other established legal sources are explained. General legal principles are often included in express provisions of law. Here, among the questions to be discussed in **Committee I**, are also included the arrangements concerning the composition of the courts, the preparation and presentation of the matters, and the protection of public interest and the use of legal aid. The intention is to find structural and principal points of departure for the functioning of the procedure in the various countries.

The second sector is concerned with the various stages in the proceedings, to be discussed in **Committee II**. Here are included the questions on the main form of the proceedings, the instituting of proceedings, the hearing of the parties, the duty to examine matters and the forms of evidence, and the arrangements of the sessions, the part played by oral proceedings, and publicity. In these subquestions we try to clarify the similarities and differences between the systems on as practical a level as possible.

The third sector is concerned with decisionmaking. The questions here, to be discussed in **Committee III**, involve the competence of the supreme instance, and the extent to which the right of decision is bound to the claims. Also ways to reach decisions and voting procedures in the various systems will be discussed. Here also come in the questions of the form and content of the decisions, their linguistic form, and service of decisions.

Finally we shall discuss the decisions' guiding effect on the lower judicature and the administration. The intention is to create a basis for further discussions, possibly at the next congress concerning the implementation and publishing of the decisions made by the supreme administrative courts, and of their significance for legal protection generally.

2. Structure of Administrative Jurisdiction and Bases for the Proceedings

2.1. Main Features of the Judiciaries

In the systems to be compared we first as a group of their own distinguish those countries which have a separate administrative judiciary. The system may have one or several instances. It is also possible that some administrative matters are to be settled in the general courts.

Austria, for instance, has a system with one instance. The competence of the administrative court also includes decisions concerning the administrative authorities' inactivity. The court is the final instance in matters concerning the legality of decisions made by administrative authorities, the use of command power and force against persons, the legality of certain regulations, and breaches against an administrative authorities' duty to make decisions. In each case different legal remedies are available.

Belgium has a multiple organisation for the administrative jurisdiction. The supreme instance is the Conseil d'Etat and as lower instances there are several special administrative courts. In the lower instance the courts called la Députation permanente du conseil provincial have the widest competence. The general courts also have competence in certain administrative matters, such as direct taxation. In matters concerning local taxes appeals against the decision made by the administrative court of the first instance can be lodged with the superior court of civil and criminal matters or with the supreme court handling these matters.

France now has a three-instance system of general administrative courts. The first instance are the Tribunaux administratifs, the second instance are the five Cours administratives d'appel, introduced by an act of 1987, and the supreme instance is the Conseil d'Etat. The Conseil d'Etat is a court of

cassation, and leave of appeal is nowadays required. Leave may not be granted if there is a procedural impediment to the complaint or if no noteworthy plea has been made to support it. In certain kinds of complaints the Conseil d'Etat still is the second or sometimes even the first instance of review.

The Federal Republic of Germany has five jurisdictive branches, each with its own court organisation: the general courts, the administrative courts, the tax courts, the social courts and the labour courts. In addition, there is the Constitutional Court. Beside the general administrative courts, the tax courts and the social courts are in a way special administrative courts. There are 35 general administrative courts of the first instance (Verwaltungsgerichte), 10 superior courts (Oberverwaltungsgerichte) and as the supreme instance the Bundesverwaltungsgericht. This is a Federal court, the inferior instances being State courts. The decisions of the superior courts can be appealed to the supreme instance only by an appeal of cassation, if the superior court has so permitted in its decision. If no leave of appeal has been granted, the case can be brought before the Bundesverwaltungsgericht only if there has been an infringement against the basic procedural norms.

Greece has a two-instance administrative judiciary, the first instance being the administrative tribunals in some cases concerning agreements and claims for damages under public law. The administrative tribunals are courts of first instance also for challenging the administrative authorities' decisions concerning taxation, social security and some other categories of matters. Petitions for cassation of the decisions of the administrative tribunals can be lodged with the supreme administrative jurisdiction, the Council of State. In other matters the Supreme Administrative Court is the first and final court of judicial review.

Italy also has a two-instance administrative judiciary, the first instance being the Regional Administrative Tribunals. Their decisions can, as far as legal questions are concerned, be appealed in the judicial chambers of the Council of State. The Italian jurisdictive system is characterized by its bipartition, according to which the administrative courts are competent to handle cases where a person who claims to have direct and personal interest in a certain activity of an administrative authority can seek justice. The recourse can concern either a decision that has been made or the fact that no decision has been made. The competence of the general courts include those cases where the administration is claimed to have infringed an obligation of the same kind which can exist between individuals.

Colombia has a two-instance system. The supreme instance of appeal and in some cases the only instance of jurisdiction is the Council of State. As a lower instance there are administrative tribunals in the capitals of each department (23 in all).

Poland has a one-instance administrative judiciary. Judicial control over the legality of administrative decisions was introduced as an institution in 1980, when provisions on appeals against administrative decisions were added to the Code of Administrative Procedure. The right of appeal with some exceptions concerns all administrative decisions involving interests of individuals. The field of appeals is continually being enlarged. In some categories of cases judicial control is excercised by the general courts, such as cases concerning social security, personal status and inventions and industrial designs. For the procedure this partition of competence is of no great significance.

Portugal has a two-instance administrative judiciary, consisting of Regional Administrative Courts as the first instance and the Supreme Administrative Tribunal as the supreme instance. It has two sections. One handles tax cases and the other handles other cases. The **Tunisian** Administrative

Tribunal as the first and final instance handles judicial review of administrative decisions. It is an instance of appeal in public law cases concerning damages, where the general courts are the first instance. The Administrative Tribunal functions as a court of cassation in tax cases and in some cases concerning trades and elections. **Turkey** has a two-instance administrative judiciary, the supreme instance being the Council of State and the first instances in general matters the administrative tribunals and in tax matters the fiscal tribunals.

Sweden has a three-instance system of general administrative courts, consisting of the County Administrative Courts, the Administrative Courts of Appeal and the Supreme Administrative Court. The Supreme Administrative Court mostly gives precedents. A review dispensation is required. The Supreme Administrative Court can examine the matter in extenso. For certain categories of cases there are special courts, e.g. a two-instance system of appeals for insurance cases.

Finland has a two-instance system of general administrative courts, consisting of the Supreme Administrative Court and the Province Courts, established in 1955. By an Act issued in 1989, the Province Courts have been made into independent administrative courts which in every respect fulfill even the formal requirements. This change has confirmed the previous development. In addition, there are in the first instance special administrative courts for water cases and indirect taxation. In certain cases, as when a decision made by the Council of State or a ministry or by one of the central boards directly subordinate to the ministries is challenged, the Supreme Administrative Court is the only court instance. For the procedure the number of instances is not significant.

The other main group consists of countries which have no administrative courts, and where questions concerning the legality of administrative decisions can be brought before the **general courts**. Also in these countries there may be special arrangements for administrative cases.

In **China** the people's courts have since 1980 been competent to handle complaints against the actions of the administrative authorities. In connection with the people's courts special administrative adjudication tribunals have been set up. This development has taken place in all three court instances. The administrative tribunal of the Supreme People's Court was set up on September 5, 1988. The possibilities of judicial review have been enlarged so that today some 130 laws and regulations permit a review in court of administrative action.

On the **Ivory Coast** cases of administrative jurisdiction are settled in the three-instance general judiciary. The Supreme Court is divided into four divisions, a constitutional division, a general jurisdiction division, an administrative division and an accounts division. The lower instances handle cases of administrative jurisdiction as far as they concern contracts under public law, extra-contractual liability for damages, taxation, or public servants' salaries and other benefits. The Supreme Court as the final instance handles petitions for cassation against decisions in litigations to which a legal person has been a party, and as the only instance annulment actions against decisions ultra vires made by administrative authorities as well as election disputes.

In **Indonesia** the judiciary is organised into four sectors: general jurisdiction, administrative jurisdiction, military jurisdiction and religious jurisdiction. Each sector has its own judiciary instances, with a common Supreme Court as a cassation court. In 1986 an Act was issued on administrative courts, but for economic and technical reasons it has not yet been implemented. According to this act administrative courts are to be established in Indonesia within five years. The national report explains the proceedings in the future administrative courts.

Israel has an integrated judiciary and its Supreme Court is the first and final instance in matters of administrative jurisdiction. As an administrative court, the Supreme Court works as a kind of High Court of Justice, having another composition than in civil or criminal cases. The lower general courts do not handle administrative cases. For social and taxation matters special administrative tribunals have been established in connection with the administrative authorities, and appeals against their decisions are lodged with the general District Courts (tax cases) or the Labour Court (social security). In tax cases the decisions made by the District Courts can be appealed to the Supreme Court sitting as Civil and Criminal Court. Though the Supreme Court generally is the only court in administrative cases, a kind of internal appeal is available. Under certain conditions a case can be heard in a larger composition of at least five members in the Supreme Court.

In **Madagascar** the Administrative Chamber of the Supreme Court as the first and final instance handles cases of administrative jurisdiction. Only in certain cases the Administrative Chamber acts as an instance of appeal or cassation against decisions made by administrative organs having a jurisdictional character. The Supreme Court also has several cassation sections for matters of general jurisdiction and an accounts section for the control of public bookkeeping.

In **Pakistan** the judiciary consists of a Supreme Court, four High Courts, and courts of first instance. In addition, there is the Federal Shariat Court and special tribunals with restricted competence. The Supreme Court is competent to handle disputes between the Federal Government and a Provincial Government and between two Provincial Governments, and certain matters of basic rights. The Supreme Court can also give advisory opinions to the President in legal matters. The Supreme Court is court of appeal for matters decided in a High Court and in the Federal Shariat Court and mentioned in the constitution, and in other matters, if the Supreme Court

grants a leave of appeal. In addition, the Supreme Court is the court of appeal for decisions made by an Administrative Court or Tribunal. According to the Constitution, administrative courts or tribunals can be established for matters concerning e.g. civil servants and taxation. In accordance with these provisions in the Constitution, Administrative Tribunals have in 1973 been established for matters concerning civil servants. Appeals against decisions made in these special courts are lodged with the Supreme Court. A leave of appeal is required, and it will be granted if the matter concerns a substantial question of law of public importance. The appellant must present his appeal personally or through a lawyer.

In **Senegal** the supreme jurisdiction in administrative cases is exercised by a section of the Supreme Court, which is the last instance in administrative disputes. As regards remedies against actions ultra vires, the Supreme Court is also the first and thus the only instance.

The courts established in connection with the international organisations form a group of their own. The Administrative Tribunal of the **United Nations** (UN) handles claims against the UN administration. Its competence is thus limited to matters concerning employment contracts for and appointments of the persons employed by the UN or its organisations. The Tribunal has seven members, elected by the General Assembly of the UN for three years at a time. The Tribunal makes independent decisions, which must be observed within the UN administration. Among the special characteristics of the procedure it can be mentioned that before proceedings are instituted in the Tribunal a redress claim must be made against the UN organ that has made the original decision. If the redress claim does not give a satisfactory result, a complaint must be made to a special Board of Appeals, and only after this procedure is it possible to bring the matter before the Tribunal.

The Court of Justice of the **European Communities** (EC) works as an administrative court when examining appeals against the decisions or defaults of the Council or the Commission of the Communities. The member countries, the Council, or the Commission, and in certain cases the European Parliament, have the right of appeal. Typical appeals concern violations of competition norms, regulations approved against the opinion of a member country, or industrial subsidies claimed to be in violation of the EC-legislation. In some cases the EC-court works as an international court, when the Commission is prosecuting a claim against a member country. These special features also influence the proceedings.

As a **summary** we can see that despite the organisational differences the special character of the administrative cases has been taken into account also in those countries where there are no special administrative courts. Many systems have a special division for administrative cases in the supreme instance or a special composition for the settlement of these matters. For the proceedings it is of significance how many instances the system for settling administrative cases has, and whether the supreme instance works as a cassation court.

2.2. General Rules for the Administrative Process

The first point to be compared is the way that the proceedings in the administrative courts has been prescribed. Is there a general law or other general regulations?

For instance **Indonesia** has a general law, as the 1986 Act on the Administrative Court also regulates the proceedings. In **Austria** the general procedural regulations are included in the Act on the Administrative Court (Verwaltungsgerichtshofgesetz), revised in 1952. **Colombia** has general regulations on judicial procedure from as early as 1913, substituted by a new law in 1941, and modified by a decree-law in 1984. The **Polish** Code of Administrative Procedure from 1960 also regulates the

judicial proceedings. The Code of Civil Procedure must be observed in cases not mentioned in the first Code. In **Portugal** general regulations about proceedings in the administrative courts were issued in 1985. These have the character of a so called décret-loi. It does not exhaustively cover all proceedings. I.a. an earlier decree concerning the supreme instance remains in force.

The Federal Republic of Germany has a general law from 1960 (Verwaltungsgerichtsordnung). The tax courts and the social courts have procedural laws of their own. An integrated act covering the general as well as the taxation and the social jurisdiction is being prepared. **Sweden** has two general laws from 1971. One regulates the organisation, and the other, the Act on Judicial Procedures in Administrative Courts, the proceedings in the general and special administrative courts. It includes general provisions on complaints, how they are made and handled. **Tunisia** has a general law from 1972, including detailed regulations on the procedure in the Tribunal administratif. Also **Turkey** has a general law on procedure in administrative courts.

In **Italy** the regulations for the procedure in the Council of State are included in two statutes, and one regulation of lower order. Together they form a whole. There are few special regulations, mostly concerning election cases. In **Israel** the procedural regulations are secondary legislation, and issued by the Ministry of Justice, as entitled by law. These regulations generally concern the Supreme Court when sitting as an administrative court. **Madagascar** has an ordinance from 1960 on proceedings in the Administrative Chamber. There are two exceptions from the general field of application: in appeals for cassation the rules for civil and commercial cases are to be applied. In tax cases the rules of the tax code are observed. In **Senegal** the procedural rules are included in the Act on the Supreme Court. They can be considered equal to a general law.

The courts of the international organisations also have their own procedural rules. The procedure in the Tribunal of the **United Nations** is regulated by the rule accepted by the General Assembly in 1949, and by the standing order laid down by the Tribunal itself in 1950. In the same way, the procedural rules for the Court of Justice of the **European Communities** are included in the EC-agreement, where the statute of the court is included as an appendix. More detailed norms are included in the standing order. It is drawn up by the court itself and confirmed by the Council.

In some countries the general regulations on civil procedure also apply to administrative cases in the supreme instance. In the **Chinese** Civil Procedure Law from 1982 this is specifically stated. Since 1987, an administrative procedure law is being prepared. The **Ivory Coast** applies integrated procedural regulations from 1972 on both civil and administrative jurisdiction.

In some countries the procedural regulations for the administrative jurisdiction are scattered in the legislation. In **France**, for instance, the procedural regulations are included in the laws for the various instances of the administrative courts. For tax cases there are special procedural regulations. **Finland** does not have a general procedural law, either, although one is being prepared. The procedural regulations are included in the acts on the administrative courts. In addition, there are general rules on appeals and on supplementing petitions, on the sending of documents and on information about decisions. **Belgium** does not have a general law, either.

Special regulations are generally issued for tax cases, as appears from the Belgian, French, German, Swedish and Turkish reports. Among other groups of cases with special regulations we can mention social security cases and appeals against decisions made by the local (municipal) authorities, as in Sweden and Finland.

2.3. Significance of Legal Principles

Generally established legal principles are that the parties are to be heard, the examination principle, i.e. the obligation of the authority to investigate the matter, and that the reasons for the decisions must be given. The administrative jurisdiction is further characterized by the written form, particularly when proceedings are instituted, and the publicity of the proceedings.

The general legal principles are perhaps expressed in greatest detail in the act on administrative proceedings (Verwaltungsgerichtsordnung) in the **Federal Republic of Germany**, intended to be exhaustive. The Constitution of the Federal Republic of Germany also states the obligation to hear the parties (Article 103). If anybody considers that he has not been legally heard and he can resort to no other legal remedy, he can bring the matter before the Constitutional Court. Also, if a claim concerning incorrect hearing is presented in the Federal Administrative Court, the court, in its capacity of cassation court, can declare the decision invalid, and return the case for reexamination.

The **Swedish** Act on Judicial Procedures in Administrative Courts expressly regulates the legal principles, and in this respect the act is exhaustive, even if it contains several references to the general Code of Procedure. The Act on Judicial Procedures in Administrative Courts includes general regulations on hearing and on obtaining statements from other authorities. The **Portugese** act on administrative procedure mentions the following general legal principles: the contradictory principle, i.e. hearing, the examination principle and the written procedure. As far as the giving of reasons for the decisions is concerned, there is a reference to the general act on civil procedure. Also in **Poland** the general legal principles are expressed in the legislation, i.a. the parties' participation in the proceedings, the obligation of the authorities to examine the case and the submitting of reasons for

the decisions. The Supreme Administrative Court has specified many principles, such as equality before the law, non-retroactivity of laws, and the obligation to reconcile public and individual interests. In **Turkey** the central principles, such as the publicity of the proceedings, and the giving of reasons for the decisions, are confirmed in the Constitution. In **Finland** the significance of the general legal principles, such as hearing and giving explanations for the decision, are seen in the legislation on extraordinary legal remedies, according to which a violation of these principles may have as a consequence that even a decision having gained legal force will be repealed.

Although the legal principles are not in all countries inscribed in law, they still have considerable significance as supplementary legal sources. In **France** legal praxis has established important principles. Of a significance comparable to law are the general right of appeal and the principle of hearing. The principle of hearing has been considered to include the obligation to inform the parties of the fact that a jurisdictive matter has been instituted, of the trial material and of the progress of the process. Other principles do not have the same legal force, and they can be set aside by norms having lower standing than acts. In **Belgium** the legal principles supplement the written law. As central principles are also mentioned the impartiality of the judges and the principle of equity in cases concerning damages. In **Italy** the significance of the principles created by legal praxis is also evident from the fact that though the procedural regulations were written in 1889, only few amendments have been made. In **Madagascar** certain general legal principles are applied when the written law is silent, such as respecting the rights of the defendant, and equality of the citizens before public obligations. There are written regulations about hearing, the investigation of matters, and giving the reasons for the decision. Legal praxis is of help when there are gaps in the legislation. Legal praxis has established the subjective right of appeal, the time by which comments can be made during the

proceedings, and the effect of an administrative redress on the time allowed for appeals to a court. In **Colombia** legal praxis has great significance. The civil procedure is used as a supplementary legal source, if such a reference is made in the regulations concerning administration and if there are gaps in the legislation. Also in **Pakistan** the Supreme Court has greatly influenced the principles for the administrative proceedings. In **Tunisia** legal praxis is seen to be significant as a supplementary legal source. In **Israel** it is expressly considered that the Supreme Court has great scope to exercise discretion in the proceedings. Legal praxis evidently is of less significance as a legal source in the **Federal Republic of Germany**, where the proceedings are exhaustively regulated in the way described above.

In many countries the regulations for civil proceedings are legal sources in cases of administrative jurisdiction. The civil proceedings are directly applied e.g. in **China** and the **Ivory Coast**, which do not yet have regulations for the administrative proceedings. The civil proceedings also have supplementary use e.g. in France, in Greece, mostly concerning evidence, in Portugal, in the Federal Republic of Germany analogically when there is no express rule in the Act on Administrative Proceedings, in Sweden, considering the references to the Code of Judicial Procedure, as is also the case in Finland, Tunisia and Turkey. Although the cases of administrative jurisdiction can in many respects be compared to civil cases, there are also some differences, to be explained later.

2.4. Relation between Administrative Proceedings and other Kinds of Jurisdiction

Administrative jursidiction externally differs from civil proceedings firstly in the respect that the administrative jurisdiction is characterized by **written proceedings**, particularly at the instituting stage. Reference to this fact is made in the reports from Belgium, France, Finland, Portugal,

Madagascar, Sweden, and Tunisia. This does not mean that the proceedings cannot partly be oral. In Sweden the proceedings must be oral in the lower instances, the County Administrative Courts and the Administrative Courts of Appeal, if one party so requests.

Another distinctive feature is the **examination principle**, according to which the administrative court, actively taking the proceedings in hand, acquires the necessary supplementary information. The proceedings are also characterized by simplicy and cheapness, which is particularly pointed out in the reports from Belgium and Israel. The need to prove one's case is also of lesser significance, the main stress being laid on the acquisition of necessary information and not so much on proving its accuracy and on the use of the different means of evidence.

Despite these differences the civil proceedings in many countries generally serve as a supplementary legal source. The reciprocality helps to promote the development of the proceedings on both sides.

2.5. Procedural Differences compared to Lower Instances

In those countries where cases of administrative jurisdiction are handled in one instance only, as for instance Austria, Israel, Madagascar, Poland, and in most cases in Tunisia, the procedural differences observed in the supreme and the lower instances are of no significance.

In those countries which have an administrative judiciary with several instances, or where these cases are otherwise handled in several instances, some differences can be pointed out as regards proceedings. These differences are often connected with the fact that the supreme instance is only a cassation court, as in the Federal Republic of Germany. In the supreme instance it is not actually a matter of investigating the

facts of the case, as the case is based on the facts presented in the decision of the lower instance. No such decision is made in the Conseil d'Etat, and the parties can present their views for a longer period. The 1987 reform made the Conseil d'Etat into a court of cassation for many cases, and introduced the leave of appeal. Also **Sweden** has a system with review dispensations, and thus the court itself can regulate the number of cases to be examined, and concentrate on unifying the application of law in administrative jurisdiction.

Generally it can be concluded that the procedural differences between the supreme instance and the lower instances are not considerable. They are mostly a consequence of the fact that the competence of the supreme instance is limited to cassation, or of the fact that a leave of appeal is required, and thus it must first be decided whether the subject-matter of the appeal will be taken up for examination.

3. Working Methods of the Supreme Administrative Jurisdictions

3.1. Composition at Different Stages of the Proceedings

The supreme jurisdictions are generally organisatorically divided into divisions, departments, or other similar units. This is also the basis for the normal decision-making composition. The division can also be made on the basis of the groups of matters, and in this case the divisions are specialized.

As an example of specialization we can first mention the Conseil d'Etat in **Belgium**, has five divisions, each with three members. Two of these handle cases in French, two handle cases in Dutch, and one is bilingual.

The jurisdictive sedtion of the Conseil d'Etat in **France** is divided into ten subsections, each with five members. For more difficult matters there are joint sessions, generally for two subsections. The next levels for decision-making are the juris-

dictive section and the jurisdictive assembly. Three subsections of ten are specialized in tax cases. Between the others there is in principle no specialization, though in practice this does occur.

In **Finland** the Supreme Administrative Court at present has four divisions. In practice one of them handles general cases, mostly concerning construction and local administration, one handles only tax cases, one handles cases concerned with environmental law, and the fourth partly handles tax cases and partly other cases. The members of the court can be transferred from one division to another.

The **Italian** Council of State is competent with five members present. There are three divisions. The president of the court distributes the cases on the divisions, considering the character of the case. The Supreme Administrative Court in **Portugal** has two divisions, one for general administrative cases, and the other for tax cases. The Supreme Administrative Court in **Poland** has four departments in Warsaw, each specialized in certain categories of cases. The sections of the supreme instance that work in other cities are not divided into departments, but the members' specialities are as far as possible considered when the cases are distributed among them. The supreme administrative instance, the "sala" in **Colombia** has six sections, each specialized on certain cases. Questions concerning competence and some extraordinary petitions are settled a joint session. In **Senegal** the Supreme Court has three divisions, one of which handles cases of administrative jurisdiction. A quorum is formed with three members. In **Tunisia** the Conseil d'Etat has three departments, given the competence to handle, administrative cases, economic cases, and cultural and social cases, respectively, following the administrative fields of the ministries. Also in **Greece** the divisions have to some extent specialized.

On the other hand, no specialization has taken place between the divisions in the supreme jurisdictions of i.a. Israel, the Federal Republic of Germany, and Sweden, nor in the courts of the international organizations, which have limited competence, anyway. In the Supreme Administrative Court in the **Federal Republic of Germany** a quorum is generally constituted by five members. If a plea for cassation is left unexamined due to a formal error, the quorum is three members, as also in some cases where a decision can be made without hearing in session. In **Sweden** a quorum is constituted by five members, or four members if three of them agree about the decision. The applications for review dispensations are decided by three members, and so are some simple matters.

The **normal quorum** for decision-making in session is **five members** in Austria, France, Finland, Italy, Turkey, Greece, where also a quorum of seven members is possible, Sweden, with the above exceptions, and the Federal Republic of Germany, where three members can decide to leave a matter unexamined due to a formal error, and make so called Beschluss-decisions without hearing in session. Also in the Court of Justice of the European Communities a quorum is generally formed by five members, but three members can decide on matters of a technical or simple character, or when legal usage has been established. For **three members** to form a quorum is also usual in some systems, as in Belgium, Israel, Poland, Portugal, and Senegal, and in the Tribunal of the United Nations.

Many countries also use a **smaller composition** than normal for simple or otherwise special cases. As we have already seen, in **Sweden** four members can decide a case if three of them agree. Applications for review dispensation and some simple matters can also be decided by three members. In the **Federal Republic of Germany** three members can decide to leave a complaint unexamined. In **Austria** three members also decide cases concerning administrative penalties. In **France** and **Austria** one member can decide to stay the execution of a decision. In **Greece** matters concerning injunctions against execution are decided

by three members. In **Israel** each case is always first handled by one member, this procedure having the character of a preliminary handling, where an application can be accepted. In **Madagascar** a quorum is generally formed by three members, but in cases of cassation by five members. In the administrative division the members are not specialized on particular matters. In **Pakistan** three members also form a quorum in cases when decisions in the special administrative courts are challenged. In **Portugal** the reporter can make some decisions on his own, but the parties concerned can bring these decisions before a bench consisting of three members. Similarly, in **Tunisia** one member can decide a matter at the preparatory stage, when the outcome is clear. Such a decision made by one member can, however, be brought before the court in its normal composition.

To sum up, it can be said that the smaller compositions are used in procedural matters, and for injunctions against execution. Usually it is possible to transfer the case to be heard in collegiate session.

A **larger composition** than normal is used in cases which in principle are far-reaching. In **Austria** the normal composition of five members is supplemented by four members and the quorum of three members for cases of administrative penalties by six members in cases where the decision would deviate from previous legal usage or where there are no precedents on which to base a clear-cut answer to the question.

In the Conseil d'Etat in **France** matters are transferred to a higher level of decision if they are difficult or will constitute a precedent. Matters are normally decided in the subsections with five members present. The next decision-making level is the joint session of two subsections and the third level is the session of the jurisdictive section, with a minimum of nine members. The supreme decision-making level is the jurisdictive assembly, which also has a minimum of nine members, but in practice considerably more. Also in **Finland**

cases of fundamental significance are decided in a so called plenary session of the division, with all the members of the division, generally seven, present. The most important cases are decided in a plenary session, with all the members of the court present. In water and patent cases there are two engineer members present in addition to the five members learned in law. In **Italy** precedents can be handled in a special session with 13 members, i.e. the of the Council of State and an equal number of members from each of the three divisions. In **Israel** a quorum for an oral plenary session is formed by the normal three members or by any larger odd number of members.

Portugal in addition to the normal composition has a division plenary and a plenary session. From the normal composition a matter can be brought to a division plenary, consisting of the president of the court and nine members. The plenary particularly handles such decisions made by the divisions, where it is claimed that the division has settled the matter contrary to a decision in another division or to a plenary decision. In **Senegal** the divisions can have a joint session in which participate the first president of the Supreme Court, the chairmen of the divisions, and some members, or altogether five. In **Tunisia** the plenaries are constituted by the President of the Court, the chairmen of the departments, and the chairmen of the preparing divisions. In **Greece** 13 members participate in the joint sessions for the most important matters.

The purpose of the larger compositions is to prevent conflicting decisions and also to give more authoritative decisions in matters which in principle have far-reaching significance. Any more detailed study of the significance of these compositions is not available.

3.2. Preparation of the Matters and Reporting on Them for Deliberation

To prepare matters and to report on them in session, there may be a separate body of court officials (referendaries), or a member of the court may be in charge of these tasks.

To begin with, **Belgium** has a separate body of referendaries, where the secretariat of the Conseil d'Etat constitutes an independent group of judges. The secretary of the court prepares a memorandum for each case, and in the public handling he also orally gives his opinion of the matter. He does not actually take part in the decision-making in the court. Also in **Finland** there is a body of referendaries, who prepare the matters, prepare memoranda and report on the matters in session. The referendaries are not members of the court nor part of its decision-making composition. In **France** the auditeurs and the maître des requêtes are members of the court for the matters they present, but they are not otherwise part of the decision-making composition. In the organisation they are classified as members. In **Sweden** the matters are reported on court officials, who are learned in law but not members of the court. In patent matters there may also be officials from outside the court. In the same way in **Greece**, **Senegal**, and **Turkey** there are referendaries to prepare the matters, and they constitute a body of officials separate from the members. In Greece the referendaries do not take part in the voting, either.

In some countries a member of the court acts as reporter for the court and thus at the same time is part of the decision-making composition. In **Austria** the President of the Court distributes the complaints against decisions made by administrative authorities (Bescheidbeschwerde) among the members of the division, and these in turn act as examiners in the matters. The examiners are the first to speak, and thus play an important part also in the oral hearing. Also in France the members report on the matters. In **Colombia** it is the duty of the reporter actively to acquire the necessary information, to

complete the documents, and to remove obstacles to the proceedings. The members report on the matters in Greece, Italy, Poland, the Federal Republic of Germany, Senegal, Portugal, and Tunisia. The same procedure is applied in the Court of the European Communities. In the Administrative Tribunal of the United Nations there is no actual reporter, but the secretary of the Tribunal takes care of the necessary preparations.

To give an example of how matters are prepared we can refer to the **French** system. The auditeur prepares a memorandum for each matter, explaining the facts and legal aspects, and drafting a decision. The memorandum is then given to the chairman of the subdivision, who sends it to the examining member for reexamination of the matter. Thereafter the subdivision convenes for a preparatory session, where also the Commissaire du gouvernement is present. He is generally one of the body of lower officials in the Conseil d'Etat, and it his duty to present an impartial legal estimate of the matter in the public hearing, and to express his opinion of what the decision should be. In the session the auditeur and the examining member explain the matter. Belgium and Tunisia also have a system called Commissaire du gouvernement, although to some extent its purpose seems to be to attend to the public interest.

In **Madagascar** the chairman appoints a reporter when proceedings have been instituted. The reporter is in charge of the investigations. He proposes the measures to be taken. When he considers the matter ready to be decided he prepares two memoranda, a report and a note. The report explains the course of the matter and the claims and arguments put forward by the parties involved. The note is a consideration of the legal aspects of the matter and contains a proposal for a decision. The documents of the case, together with the memoranda prepared by the reporter, are given to the chairman of the administrative section. He sends them on to the Commissaire de loi. This is a person belonging to the Supreme Court, who, having gone into the matter, proposes that it be taken up in session. The session is preceded by a preparatory session. In this all

the members of the administrative section, including the Commissaire de loi, participate. Here the reporter presents his memoranda, and the members and the Commissaire de loi express their opinions.

The preparation of the matter and the reporter's work are an important part of the decision-making. Particularly cooperation between the reporter and the examining member can advance the investigation of the matters for decision in session.

3.3. Attending to the Public Interest and Using Legal Counsel

There are several ways to attend to the public interest during legal proceedings. Some countries have a particular organ or system to represent the state and the public power in the supreme jurisdiction. In **Israel** the Attorney General, the State Attorney, or one of his assistants represents the public power in the proceedings. **Portugal** has a special system. According to it the Public Attorney supervises legality and attends to the public interest in the Supreme Court, and also uses the right to plead for the state. It has great powers in the proceedings. The Public Attorney can remove obstacles to the proceedings, advance the investigation of the matter, give opinions about the decision, and bring forward errors also in favour of the opposing party, and also be present when the decision is made. **Senegal** also has a system of public attorneys under the Minister of Justice.

In the **Federal Republic of Germany** there is a Federal Attorney in connection with the supreme instance. He attends to the public interest, and can participate in all legal proceedings, and works under the federal government. In the matters where this official participates he is in contact with the authorities concerned and obtains their opinion of the matter. He then expresses his opinion from the point of view of the public interest, which can differ from the administration's point of view. Some states have a similar system also in the first instance and the Supreme Administrative Court.

In **Madagascar** the administration is represented both in the preparation and during the session. For this purpose a legislative and jurisdictive department has been established in connection with the Prime Minister's Office. It represents the state and takes care of the preparation of necessary explanations etc.

Tunisia has a system with a Commissaire du Gouvernement. His task is likewise to defend the public interest. The commissaire gets the material on the case during the preparatory stage, and expresses his opinion during the session.

Most of the countries compared here have no special system for attending to the public interest. Then the administrative authority whose decision is challenged generally is the party that also attends to the public interest. Even so, **Belgium** still has a Commissaire du Gouvernement, whose task it is, at least on a general level, to plead the government's opinions in individual cases. But in practice this system is applied only in certain cases. Generally the state is represented by a lawyer or through its officials. In **France** it is generally the minister concerned who pleads for the state. The system of Commissaires du Gouvernement has no such role today. The public interest is attended to by **the authority concerned** in China, Colombia, Indonesia, Italy, Finland, Sweden, and Turkey. In Greece the ministry represents its field of administration, i.e. is a party in the proceedings. In the Court of the European Communities the state or institution concerned appoints an official or a lawyer. In the Tribunal of the United Nations the right to plead is used by a representative of the international organisation being the opposing party.

As we have seen, the public interest can be attended to in many ways in the proceedings. Many countries have created special systems for the purpose. The trend is to safeguard an increasingly independent position for the administrative jurisdictions also in practice.

In some countries **legal counsel is compulsory** in the supreme instance. This is the case i.a. in Italy, Portugal, and Senegal. In the Federal Republic of Germany and in the Court of Justice of the European Communities, and in several cases also in France, legal counsel is compulsory for private complainants. This is also the case in **Colombia** for the defendant and other parties than the complainant. In **Austria** legal counsel is not compulsory when the federal state, a state, a city, a foundation, or various institutions, or persons employed by these prosecute a claim. But if counsel is used, he must be a lawyer. In other cases than those just mentioned legal counsel must be used. In Greece legal counsel is compulsory in all cases but some concerning public officials. Generally there is no such obligation to use legal counsel in other countries. Evidently it has not been considered necessary to make the procedure more formal and to increase the formalistic requirements for the proceedings. When the oral proceedings increase legal counsel is used more often.

3.4. Effect of a Complaint on the Execution of a Decision

There are in principle two ways that a complaint can affect the enforceability of a decision. In some countries the complaint has a **suspensive effect**, i.e. it defers the enforceability of the decision. In the **Federal Republic of Germany** an appeal for cassation to the supreme instance defers the enforceability of a decision made by the Supreme Administrative Court. This is also the case in **Finland**, when a decision made by the state administrative authorities is challenged. As far as decisions made by local government authorities are concerned, an appeal has no such effect, unless the appeal would otherwise become useless or the court handling the appeal forbids the execution. In **Greece** there are four legal remedies, of which only the "remedy of full jurisdiction" has suspensive effect. In other cases the appellant can ask for an injunction against execution.

In other countries the appeal generally has **no suspensive effect** on the execution of the decision. For instance, in **Austria** a complaint does not have this kind of deferring effect. But the Administrative Court can decide to defer the execution. In **Italy** it is at the discretion of the administration whether a decision in a lower court is to be enforced immediately. **Sweden** has no general regulations about execution, but appeals in general do not prevent the enforceability of decisions. Also in **Madagascar** an appeal has no suspensive effect, but the court can be asked to defer execution. Also in the **Federal Republic of Germany** there may be special regulations stating that an appeal has no suspensive effect. In **Portugal** an appeal to the Supreme Administrative Court does not prevent the execution of a decision, but the complainant can ask for a stay of execution. This can be granted, if the execution would cause damage which would be difficult to repare, if the prohibition does not seriously damage the public interest, and if it is not very likely that the appeal is unlawful.

A stay of execution is generally possible in those countries where an appeal does not have suspensive effect. Generally it is required that the execution could cause irretrievable damage and that the decision is not obviously faultless. Among the special arrangements we can mention that in **Belgium** an administrative court cannot prevent execution, but in these cases action must be taken in a general court of first instance. In Portugal an application for a stay of execution must be made at the latest in connection with the complaint, or prior to it. In **Poland** a stay of execution can be issued also ex officio. In **Israel** the administration generally waits for the decision of the court, even though an appeal does not have suspensive effect.

4. Different Stages of Procedure

4.1. Main Form of the Procedure and Its Different Stages

The procedure in matters of administrative jurisdiction can be characterized as mainly written. But in many countries an oral hearing is an essential part of the trial. Thus, in **Belgium** the claims and the grounds for them must be put forward in writing. The procedure always includes an oral hearing, but new grounds cannot be introduced there. In **France** the procedure in the Conseil d'Etat is only written, even if the lawyers in exceptional cases can appear orally. In **Finland** the procedure in the Supreme Administrative Court as a rule is written, even if the Court can arrange an oral hearing. In **Greece** the main procedural form is also written, though there is an oral and public hearing in connection with every case. There only the lawyers can appear.

In **Indonesia** the procedure is written. The parties are heard orally only when necessary. In **Israel** the procedure mostly includes an oral stage. The **Italian** procedure is also mainly written, but there is always a public session, where the parties' legal counsel appear. The proceedings include an oral stage also in **China, Poland, Senegal, and Tunisia.** In **Turkey** there will be an oral hearing at the request of one party. The court can also decide to arrange such a hearing. Also in **Colombia** the parties can request an oral hearing, and generally each party is then given 30 minutes to present their points of view orally. Within three days the oral opinion can be complemented by a written clarification. In practice oral hearings are rare. In the **Federal Republic of Germany** an oral hearing as a rule is part of the procedure also in the supreme instance. In **Sweden** there generally is such a hearing in the lower instances, at the request of one party. In the supreme instance oral hearings are rare. In **Portugal** the procedure is entirely in writing. However, a representative of the public power participates in the decision-making and can express his opinion orally there.

As an example of the stages of the procedure we can refer to the Administrative Court in **Austria**. Where ordinary complaints are concerned, the President first distributes the matters among the members. If a complaint is not to be left unexamined due to its being late or to some other defect, and if the defects can be corrected by complementary procedure, the next step is the preparatory stage. Then the administrative authority whose decision is being challenged is first given the opportunity to send the documents of the case and to give its statement within a certain period of time, generally 8 weeks at the most. In the court reference cannot be made to circumstances that have not previously been presented in the administrative procedure. A memorandum prepared by the examining member, together with the documents, is sent to the other members for them to read. The decision is made after an oral hearing or in a non-public session.

As a **conclusion** it can be seen, that though the procedure in matters of administrative jurisdiction is mainly written, also the oral procedure plays a considerable part. An oral hearing is a regular stage of the proceedings in many countries, such as Austria, Belgium, China, Greece, Israel, Italy, Poland, the Federal Republic of Germany, and Tunisia. Also in other countries a hearing of this kind can generally be arranged, though in practice it is fairly unusual, as in France, Finland, Sweden, Senegal, Turkey, and the Tribunal of the United Nations.

The oral hearing is generally part of the decision-making stage in session, when necessary supplementary information is obtained, or the parties and their representatives are given an opportuntiy to plead their case before the final decision is made. Generally the institution of proceedings and the preparation, including the memoranda drawn up by the referendaries, are in writing.

4.2. Instituting of Proceedings

As a rule proceedings must be instituted in writing. This means that generally the claims and the grounds for them must be presented in writing and even an oral hearing may not go beyond them. The petition must generally include the complainant's name, and other information identifying him, the decision that is challenged, and the claims, their grounds, and the facts that support the claims. In this respect the systems are easy to compare.

There are some differences in respect to the extent to which the complaint documents can be completed and new claims introduced. In **Greece** new claims can be presented in writing 15 days before the oral hearing in session. In **France** a complementing memorandum must generally be given within four months of the institution of proceedings. Advance notice must be given that this possibility will be used. In **Finland** new claims cannot be introduced after the appeal period. But new grounds to support the claims can be presented before the matter is decided, when decisions made by state administrative authorities are challenged.

In **Indonesia** a complementary document giving the grounds for the claims must be presented within 14 days of proceedings having been instituted. In **Poland** new grounds to support the claims can be presented also after the instituting of proceedings. In **Sweden** new claims can be put forward before the expiration of the appeal period, and grounds to support the claims can be presented until the matter is decided, except in cases concerning local administration, where new grounds to repeal a decision cannot be presented after the appeal period has expired. In the **Federal Republic of Germany** the grounds to support the claims must be presented within a month of instituting proceedings.

Also in **Madagascar** the proceedings are mainly in writing. The claims and the grounds for them must be presented in writing. During the session the parties can develop the grounds for their appeals orally, but only the grounds already presented in writing, and thus new grounds cannot be introduced orally.

As appears from the above, new claims generally cannot be presented when the period for filing the complaint has expired. There are, however, special arrangements, according to which a complaint can be complemented afterwards.

The complaint documents must generally be sent to the supreme instance concerned, in some cases also to a lower authority. Thus, in **Greece**, if a decision made by a lower judicial instance is challenged, the appeal papers must be given to this court. In those cases where the Council of State is the first instance of appeal, the papers are given directly to it. Listing the procedure in the various countries, we see that the appeal papers in France are given to the Conseil d'Etat, in Finland to the Supreme Administrative Court, and according to special provisions also to lower authorities, in Portugal usually directly to the supreme instance, in Poland to the administrative authorities concerned, in the Federal Republic of Germany to the lower instance, in Senegal and Tunisia to the Supreme Court, and in Turkey to the court concerned.

In some countries a special **fee** is levied when proceedings are instituted, as in Indonesia, Israel, Senegal, and Tunisia. Also some other countries a **stamp duty** may have to be paid on the appeal papers. But generally it can be said that the fees do not hinder the instituting of proceedings and the seeking of legal protection.

Many countries also use a **complementing procedure**, which gives the parties an opportunity to correct deficiencies in the complaint documents. Reference to the significance of this procedure has been made in the reports on the systems in i.a. Austria, France, Portugal, the Federal Republic of Germany,

Sweden, and Finland. The significance of the complementing procedure lies in that slighter deficiencies do not prevent the examination of the matter.

4.3. Preparing the Matters and Hearing the Parties

After the instituting of proceedings and the the registration of the appeals, follows the preparatory stage. The regular preparatory form is that the person who is going to present the case first hears the parties and obtains other necessary explanations. When the complementary explanations are available and the matter has been prepared, the reporter generally writes a memorandum for the hearing in session. The matter is then taken up in a session of the court, and as we have seen above, there is often a possibility for an oral hearing. The preparatory stage may include special features, and some examples will be given below.

A detailed description of the course of the oral hearing is given in the **Austrian** report. It is the chairman of the division who decides to arrange such a hearing. All the parties must be called to it, but their absence does not prevent decision-making. For the oral hearing the division must constitute a quorum, and the hearing is public. For reasons of public security and order the free access can be limited. The chairman opens the proceedings and the examining member appointed to the case speaks first. The claims and grounds put forward by the parties are repeated only for absent parties or at the request of one of the parties. Next to be heard is the complainant or his representative, and after him the representative of the lower authority concerned. If there are several parties to the case, the chairman decides the order in which they may speak. The chairman and members ask questions in order to clarify the matter. An oral hearing is held only for substantial reasons. Before the legal reform of 1952 oral hearings were the rule. Since then this kind of hearing is arranged only if the appellant so requires within the time

limit, or when the chairman of the division, the examining member, or the division considers it necessary. The court need not agree to a party's request for an oral hearing, if the matter is to be remanded, if the decision is to be quashed due to lacking competence or an apparent procedural error, or because of being contrary to legal praxis, or when the written evidence provided by the parties makes an oral hearing unnecessary. The discussion and the deliberation of the decision after the oral hearing are not public. If the members cannot agree about the decision they vote, both about the outcome and about the reasons. The first to express his opinion is the examining member, after him the other members in order of seniority, and finally the chairman. The decision is given in accordance with the opinion held by the majority, and it is binding also for the others at later stages.

In **Belgium** the reporter's memorandum is brought to the knowledge of the parties before the session. In **France** the decision proposed by the reporter is handled in a so called preparatory composition, where the proposal can still be revised for the actual session. In **Finland** the reporter's memorandum is generally sent to the members one week before the session, and the documents are sent to one of the members participating in the session, who acts as examining member. In **Greece** the reporter's memorandum is available to the parties three days before the session.

In **Israel** the procedure consists of two stages, first there is a hearing by one member, who cannot dismiss a claim. Only if an application is not granted there will be a normal hearing with three members present, and here the parties are also heard. In **Portugal** the reporting member takes care of the preparation, but also the other members can suggest preparatory measures. In **Tunisia** the presenting member has large powers to investigate the matter. But it is the chairman of the preparatory division who orders that surveys, investigations, and administrative inquiries are to be made. The reporter's memorandum is discussed in the preparatory division, and

after this the revised memorandum and the proposed decision are transferred for hearing in the session proper. In **Turkey** the hearing of the parties is taken care of by the secretariat of the department handling the matter, or in matters of cassation by a lower instance. The explanations that have been obtained are first sent to the General Attorney, who prepares a written opinion on the matter, whereafter the documents are sent to the reporter, who writes a memorandum.

After the preparation of the matters and in some systems a preparatory session, there is as a rule a **hearing in session.** In most countries this hearing is both oral and public. In the hearing in session it is usually not permitted to present new claims or grounds for them, and thus the hearing is based on the written material obtained in advance. Usually the session is arranged only when the matter is considered to be ready for a decision. After the session there is a deliberation, where usually neither the public nor even the parties can participate. The decision is issued later in a public session or separately in writing to the parties.

4.4. Obligation to Examine and the Investigation Principle

In administrative jurisdiction the **investigation principle** is generally observed. This means that the deciding court has an obligation to obtain the information which is necessary for the examination of the matter. This does not mean that the parties are passive about obtaining material. It is more a question of the active conduct of the proceedings, according to which matters are not decided until the examination is complete. Thus the reports describing the systems in the Federal Republic of Germany and Sweden underline the significance of the fact that the parties contribute to obtaining the necessary material in accordance with the court's requirements.

Usually the administrative jurisdiction is also characterized by the **principle of free assessment of evidence.** This means that the court considers what significance the evidence is to be given and what is to be considered to be the truth in the matter. In the same way the court in each case considers the necessity of further examinations, expert opinions, or possible surveys on the spot. The principles concerning the burden of proof, i.e. the question of who must in each case prove his claim, its grounds or a fact, are not as significant as in civil proceedings.

To supplement the general starting points, it can here be mentioned that in **Italy** the appellant must in the supreme instance prove that the lower court has made an erroneous decision. Only in cases of gross errors the supreme instance can obtain complementary evidence. In **Poland** it is the administrative authority whose decision is challenged that is obliged to obtain the material necessary for the decision. In **Israel** it is more the parties who conduct the proceedings, and the court is bound by the material presented by them. In **Indonesia** the matter is handled on the basis of written documents. Only if considered necessary the parties or witnesses will be heard. In **Madagascar** the court conducts the proceedings. It must see to it that the matter has been adequately investigated. The parties can make suggestions for measures to be taken.

In practice the application of the investigation principle also depends on whether the court is a court of cassation or whether it can also amend the contested decision. In matters of cassation the cases are generally handled on the basis of the same material that was presented in the lower instance. Thus in the **Federal Republic of Germany** the supreme instance very rarely continues the clarification of the matter by special means of investigation.

4.5. Means of Evidence

In the supreme instance of administrative jurisdiction evidence generally is of little significance. This is probably due to the fact that administrative matters more often than civil matters are concerned with the solving of legal questions and the interpretation of legal provisions, and not so much with what is to be considered the truth in the parties' contradictory statements. Thus the main means of evidence is documentary evidence, as stated in the reports describing the courts in Belgium, France, Israel, Italy, Portugal, the Federal Republic of Germany, Sweden, Senegal, and Turkey, and the UN Tribunal and the Court of the European Communities.

In addition to documentary evidence recourse can also be made to other means of evidence, but for the whole they are of less significance. Thus, for instance in **Belgium** witnesses can be heard in session, or by one member or the secretary. Also expert witnesses may be called in or surveys arranged on the spot, if necessary. In **China** witnesses and experts can also be heard, and there can be expert evaluations, investigations and inquests.

In **Greece** the means of evidence used in civil proceedings are applied. In **Finland** it is relatively rare that witnesses, the parties, or experts are heard in session. In practice surveys are mostly arranged in cases concerning the environment. In **France** oral evidence is often not accepted, either, but investigations and surveys may be arranged. Similarly in **Israel, Italy** and **Poland** witnesses, parties, and experts are rarely heard orally. In **Madagascar** the main means of evidence is the hearing of parties and witnesses. In **Portugal** it is not possible to hear witnesses, and expert opinions are of no great significance. In **Senegal** the parties can present experts' statements in writing. In **Sweden** oral evidence is very rarely given in the supreme instance. This kind of evidence is not usual in the **Federal Republic of Germany**, either. In **Tunisia** evidence cannot be given under oath. In **Turkey** it is in principle possible to arrange investigations and surveys, and to arrange a separate hearing of witnesses.

It was already stated above, that in administrative jurisdiction free assessment of the evidence is generally applied. This means that the court will decide the case considering all the circumstances presented. If witnesses are heard or other argumentation is accepted in the session the procedure is usually similar to the one applied in civil proceedings.

4.6. Hearing in Session and Publicity of the Proceedings

After the preparatory stage the court convenes in session. The procedure in session is generally public and, as we have seen above, it often includes an oral hearing. In some systems the oral hearing is a regular stage. In many countries the general public can also attend the hearing in session, though there are some differences in this respect.

The **sessions** are public in many countries, such as Belgium, China, Greece, Israel, Italy, Poland, the Federal Republic of Germany, and Turkey. In **Austria** the oral hearing is public, as reported above. The deliberation and the rest of the session thereafter are not public. In **France** the public can only attend the oral sessions, which is the stage where the Commissaire du Gouvernement expresses his opinion. In **Madagascar** the sessions are public, except in tax cases. In **Portugal** there are no public sessions, as the procedure is only written. In **Sweden** the procedure is also mainly written, and usually it is not possible for the public to be present at the hearing. If there is an oral hearing, the public can be present, unless there are provisions on secrecy that require a session in camera. The same principles are applied in **Finland**, where trials are in pinciple public, but in practice this does not apply to the supreme instance, as the procedure is mainly written. In the **UN Tribunal** the sessions are in practice not public, for reasons of security.

Generally it can be seen that the **oral hearings** are open also to the general public. For special reasons, mostly concerning national security or the protection of privacy, the hearing can be arranged in camera. But the proceedings are not open to the public when they are written. If the decision is issued in session, this stage is public, without exception.

In most systems the public cannot obtain information about the **trial documents**. But it can be noted that in **France** the statement of the Commissaire du Gouvernement is also available to the general public. In **Belgium** the trial material is not public according to the procedural provisions, but it can be public according to other provisions. In **Israel** the court can grant permission to study the trial material. The **Swedish** and **Finnish** systems differ from the others in the respect that there is legislation on the publicity of public documents. But there are some exceptions to the principle of publicity, mostly for reasons of protecting privacy.

Generally **the parties are entitled** to see all the trial documents. This right is also connected with the hearing principle, according to which the parties must be entitled to make a statement on all the material affecting the decision. There may be some exceptions from this principle. Thus in **Turkey**, the person instituting proceedings cannot see the secret memoranda presented by the administration. In **China** only the legal counsel of the parties can see documents containing state secrets or information concerning private matters. As far as this information is concerned they are bound to secrecy also towards their clients.

The **reporters' or members' memoranda** are often in a different position from the rest of the court material. These memoranda are not considered to be acquired evidence, but also concern discussions within the court. There are different provisions on the parties' right to see these memoranda. In **Belgium** the memorandum prepared by the secretary of the court and concerning the course of the matter, is sent to the parties for their

information. In **France** the memoranda written by the members and the reporters are not given to the parties, who can see only the report of the Commissaire du Gouvernement. In **Finland** the parties cannot have the members' memoranda nor that part of the reporter's memorandum which contains the reporter's opinion and the reasons for it. In **Greece** the reporter's memorandum is available to the parties. In **Israel** the members' memoranda are not in practice given to the parties without valid reason. In **Madagascar** the parties cannot see the memoranda, either. In **Poland** the members generally do not write memoranda during the proceedings. In **Portugal** the representative of the public power is informed of the proposed decision, and he can be present at the deliberation. In **Tunisia** and **Turkey** the reporting member's memoranda are not public to the parties.

To **sum up** it can be seen that the parties cannot have the members' and reporters' memoranda that are more concerned with the considerations of the court. There are some exceptions from this, as the statements of the Commissaire du Gouvernement, being concerned with attending to the public interest.

5. Examination of the Claims and Decision-making

5.1. Competence of the Supreme Judicial Instance

The position and competence of the supreme jurisdictions were dicussed already at the congress in Paris in 1983. Then we could see that there are terminological differences and that the courts' competence varies.

From the point of view of procedure it should be noted whether the court has cassatory or reformatory competence. The former means that the court can only quash an erroneous decision. If the appeal is reformatory, the supreme court can make a new decision to replace the erroneous decision, and thus revise the previous decision. In many countries the supreme judicial instance has both types of competence, depending on the remedy being used. But it seems to be more usual that the competence is limited to cassation.

These starting points can be supplemented with features from different systems. In **France** and **Belgium** appeals are as a rule cassatory. But in matters of Contentieux de pleine juridiction, i.e. mostly matters concerning damages under public law, the court can also revise the decision and determine the amount of the damages. Also in **Israel** and **Madagascar** the Supreme Court is competent to determine the amount of damages.

In **Italy** the Council of State can quash a decision, but also state the legal consequences of this. Thus its competence is not merely limited to annulment. In **Senegal** the court can revise a decision in election matters, and establish that another person has been elected. Also in **China** the supreme instance probably can revise the contested decision.

In **Sweden** the competence of the court depends on the character of the appeal, in the respect that when a decision made by a state administrative authority is challenged, the court's competence covers both the legality of the decision and its expediency. The court's decision substitutes the decision made by the lower authority. In matters concerning local self-administration the court's competence only covers the legality of the decisions, and the court can only quash the decisions. **Finland** has a similar system, even if the competence of the Supreme Administrative Court does not cover questions mainly concerning expediency.

This distinction concerning the legal remedies and the competence also affects the procedure. The court will evidently conduct the proceedings more actively when the appeals are reformatory. Then the supreme court also takes a stand on the matter itself and formulates a new decision.

5.2. Extent to which the Power of Decision is Restricted by the Claims

Generally the court cannot investigate the matter beyond the claims put forward by the parties. This principle of ultra petita limits the examination of the matter so that the court cannot exceed the claims.

Some further points can be made to complete the picture. In **Belgium** the supreme instance can annul an erroneous decision in excess of the claims. In **Italy** the supreme jurisdiction can sometimes rule extra petita, mostly in cases of procedural errors in the lower instances. In **Sweden** and in **Finland** the supreme instance can for special reasons go beyond the claims in favour of a private person, if the decision is not detrimental to another private party. In the **Federal Republic of Germany** the court cannot decide a case beyond the claims, if this would break the rule of reformatio in peius. Also in **Colombia** the court is restricted by the claims and by prohibition against reformatio in peius. In **Poland** a prohibition against ultra petita is not applied.

Thus the previous principle is also connected with the application of the prohibition against reformatio in peius. This means that a case cannot be decided to the disadvantage of the appellant. In those cases where both parties involved have challenged the decision made in a lower instance, this prohibition has no real significance. The prohibition against reformatio in peius is generally applied. Two special situations can, however, be mentioned. In **Belgium** exceptions from this rule can be made in matters of cassation and contentieux de pleine juridiction, if the court annuls the whole decision, though the appellant has only asked for a revision. The prohibition can also be put aside if the appellant in the first instance has lost the case on procedural grounds and then in the second instance loses it on material grounds, as stated in the **Italian** report.

The fact that the **opposing party accepts** the other party's claims or the facts presented by him does not usually as such bind the deliberation of the court. But in practice this kind of acceptance generally is important, above all in cases where a lower administrative authority admits that an error has been made. For instance in **Belgium** an administrative authority can revoke its own administrative decision, though this does not necessarily terminate the proceedings. In **Austria**, as in **Italy** and **Madagascar**, an authority can repeal a decision that has been challenged in court. In **Finland** an administrative authority can also correct evident mistakes of fact or writing, and if judicial proceedings have been instituted, the corrections will be reported to the court.

It is also a general principle, that **withdrawal of a complaint** terminates the proceedings. Then the court generally states that no opinion of the court will be given. In **Belgium** the court even in these cases investigates whether it is permitted to withdraw the complaint. It also determines the trial costs.

As the parties usually cannot agree about the use of public power, a **reconciliation** in a pending matter of administrative jurisdiction generally does not terminate the proceedings without special reason. The withdrawal of a complaint may have this result. In **Belgium** neither conciliation procedure nor reconciliation are known in administrative jurisdiction. In **France** a reconciliation can be taken into consideration and the case can be dropped. Still, in this case the court must investigate that the reconciliation does not offend the ordre public. In **Italy** a conciliation procedure probably is not possible, either. But an complainant in the first instance can withdraw his original complaint, if the complainant in the second instance withdraws his own. This may in some cases have as a result that the decision of the lower administrative authority re-enters into force, though it had already been quashed. In **Poland** or **Portugal** a reconciliation before the court is not possible, either. In **Sweden** and **Finland** a reconciliation can only be made indirectly, by withdrawing the

complaint. In the **Federal Republic of Germany** reconciliation is possible only in the cases where the parties can dispose of the object of the proceedings. The **UN Tribunal** has not yet had to take a stand on its attitude to a reconciliation between the parties.

That there are so few possibilities to use conciliation procedure in matters of administrative jurisdiction is probably due to the fact that these matters are to a large extent concerned with legality and the public interest.

5.3. Deliberation of Decisions and Voting Procedure

The hearing in session is generally followed by a deliberation of the decision in camera, where the parties are not present. Thereafter the decision can be pronounced in a public session, or issued separately to the parties in writing. There are considerable differences between the systems as concerns the time between the session and the issuing of the decision. The deliberation of decisions generally requires the presence of the members constituting a quorum, and the reporter. In some countries, as in **Senegal**, also the Public Attorney, who attends to the public interest, can be present.

The quorum for making a decision is usually formed by an uneven number, to prevent the votes from falling even. The **voting** procedure is as a rule that the junior member, or the presenting member, in some systems the examining member, first gives his opinion after the reporter, and then the other members in order of seniority, the chairman coming last. This system is applied e.g. in Italy, Israel, Madagascar, Poland, the Federal Republic of Germany, Sweden, Turkey, and Finland.

Opinions can be expressed in different ways. In **France** the opinions in the large composition can be expressed by the raising of hands. Generally the members express their opinions when it is their turn to speak.

The decision is written in accordance with the opinion of the majority. Usually a member's differing opinion and the minority's opinion are attached to the copy of the decision kept in the court. Thus a **differing opinion** is not included in the copy given to the parties, but it is attached to the documents, and later available to the parties, as in **Poland**. In **Israel** the member having a differing opinion is entitled to express his opinion using his own name. In some countries, as in **Finland**, the names of the members having participated in the session are indicated on the copy given to the parties.

5.4. Form and Content of the Decisions

The decision is as a rule issued in writing, and it contains the information necessary to identify the case, a description of the course of the proceedings, i.e. a narrative part, and a resolution. In this respect there are hardly any differences between the systems. The essential principle is the **obligation to state the reasons** for the decision. In some countries this obligation is laid down in the constitution, as in Belgium and Turkey. Also in other countries the obligation to give the reasons is a general principle, most often laid down in the procedural laws.

As far as the giving of the reasons for the decisions is concerned, the following special features can be noted. In **France**, if a decision is quashed, the reasons may mention only those grounds for the appeal on which the setting aside is based. In **Israel** there are no provisions on giving the reasons for the decisions, as there are for civil and criminal proceedings, but the reasons are considered a necessary part of the decision. In **Portugal** the reasons for a decision in a dispute must not be based on the acceptance of the arguments of one party as such. Also in questions concerning the interpretation of the law, the reasons must allow for the intent of the legislator, the unity of the legal system, and the circum-

stances under which the law was made and is applied. In **Tunisia** the decisions are formulated by a special committee, consisting of members having participated in the making of the decision. In **Sweden** the reasons are not stated in cases concerning review dispensations.

The reasoning is particularly important in questions concerning an interpretation of the law. The court then endeavours to seek the intention of the legislator, as stated in the **Belgian** report. In **Finland** the Supreme Administrative Court, referring expecially to questions of fact, has pointed out to the lower authorities that the reasoning must be faultless. The reasons for the decisions are particularly important for establishing the status of the court in those cases where the legislation is inadequate.

When there are gaps in the legislation **Belgium** mainly applies the Napoleonic civil code, which obliges the judge to give a judgement even if the law is inadequate or unclear. In **France** the reasons for the decision sometimes include a standpoint on the interpretation of the law or a complement to it, if there is no explicit norm. A precedent can thus cover a gap in the legislation.

In **Madagascar** the reasons for the decision are given in greater detail than usual if the written legislation is inadequate. If there is a gap in the legislation in **Portugal**, a provision in the civil code is usually applied, and analogy is used as far as possible. In the **Federal Republic of Germany** cases of gaps in the legislation are extremely rare. In **Turkey** the significance of the general legal principles and of deliberation according to the judge's conscience are underlined as regards gaps in the legislation. In **Senegal** the decisions of the Supreme Court acquire the character of precedents when there are gaps. In **Poland** analogical reasoning is used where applicable.

There are some differences in the practical form of the decisions, mostly in respect of who signs the decisions. In **Belgium** the decision is signed by the chairman and the registrar. In **France** the decision is signed by the chairman, the reporter, and the secretary. In **Finland** the decisions to be given out are signed by the reporter and confirmed by seal. In **Tunisia** the decision is signed by the chairman of the decision-making committee, the secretary general of the court and the reporter. In **Greece** the minutes included in the decision are signed by chairman and the secretary of the session. These formal differences in the decision have no practical significance.

5.5. Language of the Decisions

In countries that have only one official language, the decisions are written in this language. This group comprises i.a. France, Poland, Portugal, Sweden, the Federal Republic of Germany, Senegal, Tunisia, and Turkey. In Madagascar French can be used beside Malagasy. Despite the official language, a person speaking a foreign language can in most countries use an interpreter, at least in the oral hearing. It is also usual that the documents can be translated for the parties at their request.

In the countries that have **several official languages** there are special regulations about the language of the decisions. For instance **Belgium** has three official languages. In some cases one of these must be used in the proceedings, but if there are no special regulations, a party can use any of these languages. The main rule is that other languages than the official ones cannot be used. Interpretation will be arranged if necessary. In **Italy** the population in the province of Bolzano can use German in the local administrative court, but not in the supreme instance. In **Israel** Hebrew and Arabic can be used. In **Finland** the parties can use either of the official languages Finnish or Swedish. The courts of the **international**

organisations have settled the language question so that in the UN Tribunal the organisation's five official languages can be used. In the Court of the EC the language to be used in the proceedings depends on the language of the petition. But a member country can always use its official language.

To sum up, it can be said that the language question has been considered in the administrative jurisdiction so that the parties can carry out a lawsuit and use their own language as far as possible.

5.6. Service of the Decisions

As a rule, the decisions are issued by the court to the parties, though in some systems only to their legal representative. There are two main procedures of service: the decisions are either pronounced in a public session, as in **Greece**, or issued in writing to the parties.

There are different ways of service. In **Belgium** the decisions take legal effect when issued. Service is an extra measure, handled by the registrar. In **France** the decision is sent to the parties and to the minister concerned for their information. The decision is in practice sent **by mail** in many countries, as in Italy, China, the Federal Republic of Germany, Sweden, and Finland. In some countries the decision is sent through the legal representative. For instance in **Portugal** the decision is sent to the legal representative by registered mail or given to him in person. There are no appreciable differences in the service of decisions.

5.7. Guiding Effect of the Decisions

With some exceptions, the administrative jurisdiction does not expressly accord the decisions of the supreme instance binding effect in future cases. Even so, they are as a rule important as precedents. This is also evident from the procedure, as the quorum required in the court for the most important and far-reaching decisions is larger than usual.

In **Belgium** the decisions in the supreme instance do not formally have a binding effect outside the case. But the decisions have doctrinal authority. Also in **China** the decisions made in the Supreme People's Court are granted so called referential significance in the lower judicial instances. In **France** the Conseil d'Etat in some cases explicitly wants to set precedents. In **Finland** the decisions of the Supreme Administrative Court do not expressly have binding effect, but in practice they do have a guiding effect. In **Israel** the decisions of the Supreme Court are binding for the lower instances, and the most important decisions are published in different ways. In **Italy** the supreme instance endeavours to follow its own legal praxis consequently, though this does not formally bind the lower instances. In **Poland** the Court's decisions have no binding effect, either.

In **Pakistan** the Supreme Court is very important for the development of legal protection within the administration. It has created principles for the rights of private citizens, to which the authorities must adhere. Also in other respects the judicial control of the administration is developing rapidly, and here the Supreme Court holds a significant position.

In **Portugal** the court endeavours to be consequent, and the decisions have a guiding effect. In **Senegal** the character of the Supreme Court's decisions as precedents is evident primarily when there are gaps in the legislation.

In **Sweden** a review dispensation is required for an appeal to the supreme instance, and indirectly this has underlined the significance of the decisions as precedents. In **Turkey** precedents are handled in a special plenary assembly, whose duty it is to attend to the unity of the jurisdiction. The decisions of the assembly are published in the official paper. A division of the supreme instance, the lower courts, and the administration must submit to these decisions.

As the decisions made in the supreme instance are not generally explicitly binding, their guiding effect depends on the information about and practical availability of the decisions. In this respect interesting comparisons can be made as regards yearbooks, computer registers, and other ways of publishing the decisions.

6. Summary

6.1. Conclusions about the Comparison

Despite the differences in the judicial systems and the organisation of the judiciary, the proceedings have a considerable number of features in common. The exercise of judicial power has the same goal despite organisational differences: to reach a conclusion in agreement with the demands of substantive law, and to give legal protection to those who need it. As legal protection can only be carried out if the matters are always adequately examined, the practical procedures generally follow the same lines.

From the national reports we can conclude that in in many countries there is a general law on administrative jurisdiction, or that general provisions are being prepared. Special provisions mostly concern tax cases. The laws on administrative procedure often also include provisions on general legal principles, the most important being the duty to hear the parties and the obligation to state the reasons for the decisions.

Generally proceedings must be instituted in writing, with a presentation of the claims and the grounds for them. But the procedure can include an oral hearing at the examination stage. In the oral hearing the court can generally hear not only the parties, but also witnesses and experts, and sort out contradictory statements and obtain necessary supplementary evidence in questions of fact. If the parties are present, they can also immediately give statements about the material presented. In this way the parties can help to clarify the matter. The administrative jurisdiction should not be characterized as written proceedings only.

A general feature of the administrative jurisdiction seems to be the active conduct of the proceedings and the investigation principle. Accordingly, the administrative court deciding the matter also ex officio obtains supplementary information, when necessary. The practice varies as to the extent that the supreme administrative court itself obtains additional information. This is due to differences in the competence of the court and in the legal remedies. In appeals of the cassation type the court's role is not as active as when the court can also revise the decision that is being challenged.

The most usual quorum is five members, although some countries have three members. All systems are alike in that an uneven number of members participates in the sessions, as this makes it easier to reach a decision if voting is required. The collegiate character of the decision-making is also evident from the procedure for preparing the matters and organising the sessions. It is quite usual that the procedure is divided into a preparatory stage, during which necessary supplementary information is obtained for the decision-making, and a decision-making stage in session.

As far as the publicity of the proceedings is concerned, we can distinguish between the parties' right to obtain information about the trial documents, the public's access to the

sessions of the court, and the fact that the discussions among the members of the court usually remain secret. Generally the parties are entitled to information about statements given to the court that will affect the decision. As far as public access is concerned, the main principle is that the sessions are public, as long as they do not consist of discussions among the members of the court. Generally public access can be limited if the handling of the matter so requires. The publicity given the court's activities helps to clarify the picture of how the system works and to increase the trust in it.

As the administrative courts have fairly extensive means to obtain supplementary information, the proceedings are characterized by an attempt to find the substantive truth. In practice, it is more a question of obtaining the necessary information, by hearing the parties, authorities, and other instances that can help to clarify the matter, and not so much a question of production of evidence and clarification of contradictory statements, as in civil and criminal proceedings. Despite its active conduct of the proceedings and the investigation principle, the administrative court generally cannot investigate matters beyond the claims of the parties. The general principle is that even the supreme administrative court cannot judge ultra petita, i.e. extend its decision beyond the claims presented in the matter. However, there are some exceptions to this main rule.

An important common principle is also the obligation to give the reasons for the decisions. Many countries have explicitly emphasized the requirement for clear and full reasoning. In many countries the constitution also includes a provision about this obligation. The reasons given for the supreme court's decisions are important not only for the parties but also more generally for the development of legal praxis.

6.2. Questions to Discuss

There will be three working parties at the congress, discussing the following topics:

I The Administrative Jurisdiction and its Composition
II The Different Stages in the Procedure, and
III Deliberation and Judgment

Thus **Committee** I will discuss questions concerning the contents of a general procedural law, and the main principles of the procedure. It will also discuss the composition of the supreme instance during the various stages of procedure. The most important point here is to find out how the work can be arranged as expediently as possible, and how the collegiate handling of the matters can be secured. One subquestion is how to guarantee sufficient expert knowledge during the preparatory stage.

Committee II will discuss the various stages that the matters undergo. Some systems are characterized by a division into preparatory handling and the main hearing. Common features are to be found particularly in the form for instituting proceedings and in the ways to correct deficiencies in the documents. The essential question is how to arrange the hearing of the parties as efficiently as possible in practice. There are also points to compare in our experiences of oral hearings. When discussing the publicity of the hearings, we can also discuss how much the general public knows about the administrative jurisdiction.

Committee III will discuss questions concerning deliberation and judgment. It will be interesting to compare to what extent the decisions are bound to the claims presented. As far as the obligation to state the reasons for the decision is concerned, the systems are very similar. Even so, there are differences in the form and structure of the decisions, and in the fullness of the reasoning. The development of the reasoning is a very important question for the legal protection.

Conclusions

The theme of this congress, Proceedings before the Supreme Administrative Courts, follows up the themes of the previous congresses. The questions concerning proceedings are well suited for legal comparison, and we can hope for practical results. In these discussions, too, we can see that the procedure is very similar, despite organisational, economic, social, and cultural differences in the systems. Thus we can find common international standards and recommendations in procedural questions. The results of this congress, too may help to further the arrangements by international treaties to increase legal protection.

At the congresses of our organisation we now have discussed the position and competence of the supreme instances, the access to administrative jurisdictions, and proceedings, and a logical sequel could be to assess the structure, reasoning and significance of the decisions issued in matters of administrative jurisdiction. This is the basis for the concept of the supreme jurisdictions as providers of legal protection and keepers of legal order. That is one of the primary questions to be discussed by our organisation.

National Reports

Austria: Mrs. Ingrid Petrik, President of the Administrative Court

Belgium: M. Christian Lambotte, Premier Référendaire du Conseil d'Etat

China: Mrs. Ma Yuan, Vice-president of the Supreme People's Court

Colombia: Mr. Humberto Mora Osejo, Councellor of State

Federal Republic of Germany: M. Alfred Fischer, Président de Chambre honoraire à la Cour Suprême Administrative

Finland: Mr. Pekka Hallberg, Justice of the Supreme Administrative Court, and Mr. Toivo Holopainen, Justice of the Supreme Administrative Court

France: Mme Josseline de Clausade, Maître des Requêtes au Conseil d'Etat

Greece: M. Ch. Makrides, Conseiller d'Etat

Indonesia: Mr. Indroharto, Deputy Chief Justice of the Supreme Court

Israel: Mr. Meir Shamgar, President of the Supreme Court

Italy: M. Giorgio Crisci, Président du Conseil d'Etat

Ivory Coast: M. Alphonse Boni, Président de la Cour Suprême

Madagascar: M. Norbert Ratsirahonana, Président de la Chambre administrative de la Cour Suprême

Pakistan: Mr. Muhammad Haleem, Chief Justice of Pakistan

Poland: Mr. Edward Janeczko, Judge of the Supreme Administrative Court

Portugal: M. Alberto Sampaio Nóvoa, Juge Conseiller

Senegal: M. Amadou Makhtar Samb, Conseiller à la Cour Suprême

Sweden: Mr. Bertil Voss, Justice of the Supreme Administrative Court

Tunisia: M. Hamed El Abed, Premier Président du Tribunal Administratif

Turkey: M. Nuri Alan, Président de V. Chambre du Conseil d'Etat

Administrative Tribunal of the United Nations: M. Luis M. de Posadas, Ancien Vice-Président

Court of Justice of the European Communities: M. Thijmen Koopmans, Juge à la Cour